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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NICK MAKREAS,

Plaintiff,

v.

FIRST NATIONAL BANK OF NORTHERN

CALIFORNIA, a business entity; T.D.

SERVICE COMPANY, form unknown;

KATHY CASTOR,, an individual; RANDY

BRUGONI, an individual; and DOES 1-25

inclusive;

Defendants.

) Case No: CV11-02234-JSW

)  
) STIPULATION TO SET ASIDE ENTRY  
) OF DEFAULT AGAINST T.D. SERVICE  
) COMPANY, WITHDRAW T.D.  
) SERVICE COMPANY'S MOTION TO  
) DISMISS PLAINTIFF'S COMPLAINT,  
) AND AGREEMENT BY T.D. SERVICE  
) COMPANY TO NOT OBJECT TO  
) PLAINTIFF'S FILING A FIRST  
) AMENDED COMPLAINT AND  
) ~~PROPOSED~~ ORDER THEREON

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES HERETO THROUGH  
THEIR UNDERSIGNED COUNSEL:

1. The entry of default entered against defendant T.D. Service Company is hereby set aside;
2. The motion to dismiss filed by T.D. Service Company on October 3, 2011, which is set for hearing on January 6, 2012, is hereby withdrawn, and T.D. Service Company may not file another motion to dismiss of the plaintiff's complaint. In the unlikely event the court refuses to allow plaintiff to file a first amended complaint, or if plaintiff for any reason decides not to do so, T.D. Service Company's existing motion to dismiss it will be reinstituted, but T.D. Service

1 Company will not ask that it be sustained without leave for plaintiff to amend the  
2 complaint.

3 3. T.D. Service Company hereby agrees to stipulate to plaintiff filing a first amended  
4 complaint. In the event that the plaintiff must file a motion seeking leave to file a  
5 first amended complaint, T.D. Service Company will not oppose this motion.

6 4. Once plaintiff files his first amended complaint, T.D. Service Company may  
7 timely either answer it or file a motion to dismiss it depending on whatever course  
8 T.D. Service Company believes is appropriate.

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10 Dated: October 20, 2011

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12 /s/ Nelson W. Goodell  
13 NELSON W. GOODELL  
14 The Goodell Law Firm  
Attorney for Plaintiff, Nick Makreas

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16 Dated: October 20, 2011

17 /s/ Lawrence J. Dreyfuss  
18 LAWRENCE DREYFUSS  
19 The Dreyfuss Firm, PLC  
Attorney for Defendant T.D. Service Company

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28 **ORDER**

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2 IT IS HEREBY ORDERED THAT the default is set aside as to defendant T.D. Service  
3 Company.

4 Defendant T.D. Service Company's motion to dismiss the plaintiff's complaint,  
5 which was filed on October 3, 2011, is hereby withdraw and the hearing scheduled for January 6,  
6 2012 is off calendar. Defendant T.D. Service Company may not file another motion to  
7 dismiss plaintiff's complaint. In the event this court refuses to allow plaintiff to file a first  
8 amended complaint, or if plaintiff for any reason decides not to do so, T.D. Service Company's  
9 existing motion to dismiss it will be reinstituted, but T.D. Service Company will not ask that it be  
10 sustained without leave for plaintiff to amend the complaint.  
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12 Defendant T.D. Service Company may not object to the plaintiff's filing of a first  
13 amended complaint or a motion to seek leave to file a first amended complaint.  
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15 Once plaintiff files his first amended complaint, T.D. Service Company may timely either  
16 answer it or file a motion to dismiss it depending on whatever course T.D. Service Company  
17 believes is appropriate. Plaintiff shall file a stipulation with all defendants or file a motion  
18 seeking leave to amend by no later than November 4, 2011.

19 Dated: October 21, 2011  
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22 THE HON. JEFFREY S. WHITE  
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